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REMARKS

In the above referenced Office Action, claims 13, 15-22, and 24-35 were rejected under 35 USC 102(e) as being anticipated by Turcott. Applicant respectfully traverses this rejection.

As the Examiner is well aware, for a rejection under section 102(e) to be proper, the reference relied upon must teach each element of the claims. Contrary to the Examiner's assertion, Turcott does not teach a processor within an implantable medical device that extracts an SDB indicator data set that includes an average cycle length and a frequency (number of occurrences) of Cheyne-Stokes respiration or periodic breathing. As such, the rejection is improper and must be withdrawn.

The portions of the reference cited by the Examiner indicate that the device can identify Cheyne-Stokes respiration. The "frequency" analysis referenced refers to performing a FFT on cardiac data to identify Cheyne-Stokes respiration; it does not teaching subsequently determining an SDB indicator data set, wherein that data set is stored in the memory of the implanted device. That data set, as claimed, includes both an average cycle length (not discussed by Turcott) and a frequency (number of occurrences) of the abnormal breathing events (again, not present in the Turcott reference). The abnormal breathing events for the data set are CSR or periodic breathing. As Turcott does not extract nor store the claimed data set on an internal memory, let alone store average cycle length data or frequency data on the abnormal breathing events, the claims are not anticipated by the reference.

Furthermore, prior to one section relied upon by the Examiner at Col. 11, lines 53-60, Turcott teaches that the vascular plethysmography and arterial O₂ saturation sensors are preferably external to the device and not implanted, Col. 11, 43-45. The subsequent discussion of these two sensors in use is what the Office Action cites in the present rejection of the claims. Certain claims were rejected under 35 USC 103(a); however, this combination does not remedy the deficiencies noted above. As such, these claims are likewise allowable.

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As the present claims are in condition for allowance, notice of the same is respectfully requested. Should any issues remain outstanding, the Examiner is respectfully urged to telephone the undersigned to expedite prosecution.

Respectfully submitted,

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